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# The Court and the Election

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## The Court and the Election

Meanwhile, there was action on another front. On March 26, 1962, the United States Supreme Court had ruled in a Tennessee case, *Baker vs. Carr*, that Federal courts could accept jurisdiction in some kinds of reapportionment suits.

Encouraged by this landmark decision, Charles L. Davis and Arthur J. Lewis of Des Moines challenged the constitutionality of Iowa's 1904-28 apportionment formula. Respectively the president and the secretary-treasurer of the Iowa Federation of Labor, AFL-CIO, they said it violated the 14th "equal protection" Amendment of the United States Constitution and, further, that the Shaff Plan, if adopted, would not alleviate the present situation which, they held, denied them and thousands of other Iowans their fair share of the legislature's seats.

The suit was filed August 9, 1962, in Federal District Court for Southern Iowa at Des Moines in their behalf by Attorneys Harry H. Smith of Sioux City, former State Representative Robert F. Wilson of Cedar Rapids, and C. A. Frerichs of Waterloo. Secretary of State Melvin D. Synhorst, the State's chief elections official, was named chief defendant, along with the Governor, members of



the State Executive Council and several county auditors, as election officials. Chief Judge Harvey M. Johnson of the Eighth Circuit Court of Appeals appointed Circuit Judge Martin D. Van Oosterhout of Orange City, Northern Iowa District Judge Edward J. McManus of Cedar Rapids, and Southern Iowa District Judge Roy L. Stephenson of Des Moines as a three-judge panel to try the suit.

On October 20, 1962, the panel refused Attorney General Hultman's motion to dismiss the suit for the defendants and, ultimately, set it for trial on March 28 and 29, 1963. At the trial, plaintiffs suggested the Shaff Plan election be set aside if the court agreed that its adoption would not remedy the present situation.

On May 7, 1963, the court in a 2 to 1 decision, held that the 1904 and 1928 amendments, in combination, were "invidiously discriminatory" and that the Shaff Plan formula for apportionment of House seats appeared to be even more unfair. The court noted that 27.4% of the people elected a majority (55) of 108 House members under the 1904-28 formula while approximately 24% would elect a majority under the Shaff Plan formula.

The trio of judges was in unanimous agreement in this portion of the decision. However, there was a split in another area. Judges Van Oosterhout and Stephenson, noting the Shaff Plan was not yet a part of the Constitution, decreed it not ripe



for decision. They decided to withhold judgment on the Shaff Plan until after the December 3 election which, they said, might have a bearing on the court's ultimate decision. Judge McManus dissented, holding that the Shaff Plan was unconstitutional on its face and, therefore, that the December 3 election should be enjoined to save the taxpayers its estimated cost of \$250,000. He held that the legislature as then constituted should remain in effect as a "de facto" body to reapportion its seats under the 1857 formula, which the 1904-28 formula had repealed.

### *The Shaff Plan*

With the court standing aloof and the 60th General Assembly in adjournment, the Shaff Plan's fate now rested with the people. The Plan was easy enough to understand; it simply proposed this new apportionment formula as a substitute for the 1904-28 formula:

SENATE: The number of seats would be increased from 50 to 58, all based on population. County lines could be crossed where necessary to create 58 districts, each with population deviating no more than 10% from 1/58th of the state's population at the last census.

HOUSE: The number of seats would be reduced from 108 to 99, one for each of the 99 counties, regardless of its population.

ENFORCEMENT: House seats would not be reapportioned. Senate seats would be reapportioned every year ending in "3" by a commission of 10 members, five each from the two leading political parties as chosen by



their respective state central committees. The commission would have until February 15 to reapportion Senate seats. The legislature would have until May 1 to accept the commission's plan, to change it, or to enact its own plan if the commission failed to act by February 15. If both the commission and the legislature failed to act, the Iowa Supreme Court would have until October 1 to adopt a plan. Any 10 legislators, by June 1, could ask the Supreme Court to review any plan adopted by the commission and/or the legislature to make certain it conformed to the Shaff Plan formula.

### *The December 3 Election*

Final decision on the Shaff Plan was now up to the people in whom "all political power is inherent." First, however, they were to be exposed to the running Great Debate of several months' duration.

Proponents argued that the Shaff Plan, although not perfect, was a step toward something more fair and equitable; that you had to make progress a step at a time. Opponents said it was even more unfair than the 1904-28 formula, which, they were careful to note, already had been viewed as "invidiously discriminatory" by the Federal Court. They also held it sought to freeze minority control into the Constitution, which would make it impossible to take future steps toward more equitable apportionment.

Robert K. Beck, Centerville editor-publisher and former State Representative, was named State Chairman of the Citizens for Reapportionment, De-



cember 3 group, which carried the fight for the plan. A fellow editor-publisher and former state Senator, Duane E. Dewel of Algona, headed the Iowans Against the Shaff Plan organization. Both leaders were Republicans but members of both parties, along with citizens deeply interested in the Shaff Plan's fate but without strong party ties, flocked into both camps.

Governor Hughes, acting against the counsel of his own political advisers, also got into the thick of the fight. He argued forcefully, up and down the state, against the plan and was credited in large measure, along with State Senator Jack Schroeder, Bettendorf Republican, for its defeat.

So the battle was joined and the Great Debate took place in every corner of Iowa. By 10 p.m. on December 3, the question was settled. The people had rejected the Shaff Plan, 272,382 to 190,424. A county-by-county breakdown of the vote may be found on the inside back cover.

#### *Back to Court*

Even as election smoke cleared, the Federal Court panel on December 4 reopened the reapportionment suit, calling a pre-trial conference for December 7. Three days later, still moving with deliberate speed, the court set December 20 for a hearing.

At the hearing, counsel for plaintiffs asked the court to revive the 1857 apportionment formula repealed by the 1904 amendments, which, in com-



bination with the 1928 amendment, already had been held "invidiously discriminatory" by the court. Attorney General Hultman, for the state, requested the court to give the legislature another chance to reapportion its seats — along lines the court might suggest. He said the nearness of the 1964 elections posed a hurdle that could not be cleared if the 1857 formula were to be revived. He also argued there was no precedent in Iowa for revivability of sections of the State's Constitution that had been repealed.

Mindful the situation called for prompt action, the court reached a unanimous 3 to 0 decision on January 14, 1964. Its conclusion: The legislature should reapportion its seats in time for the 1964 elections or face the prospect the court might do it. The court directed the legislature to:

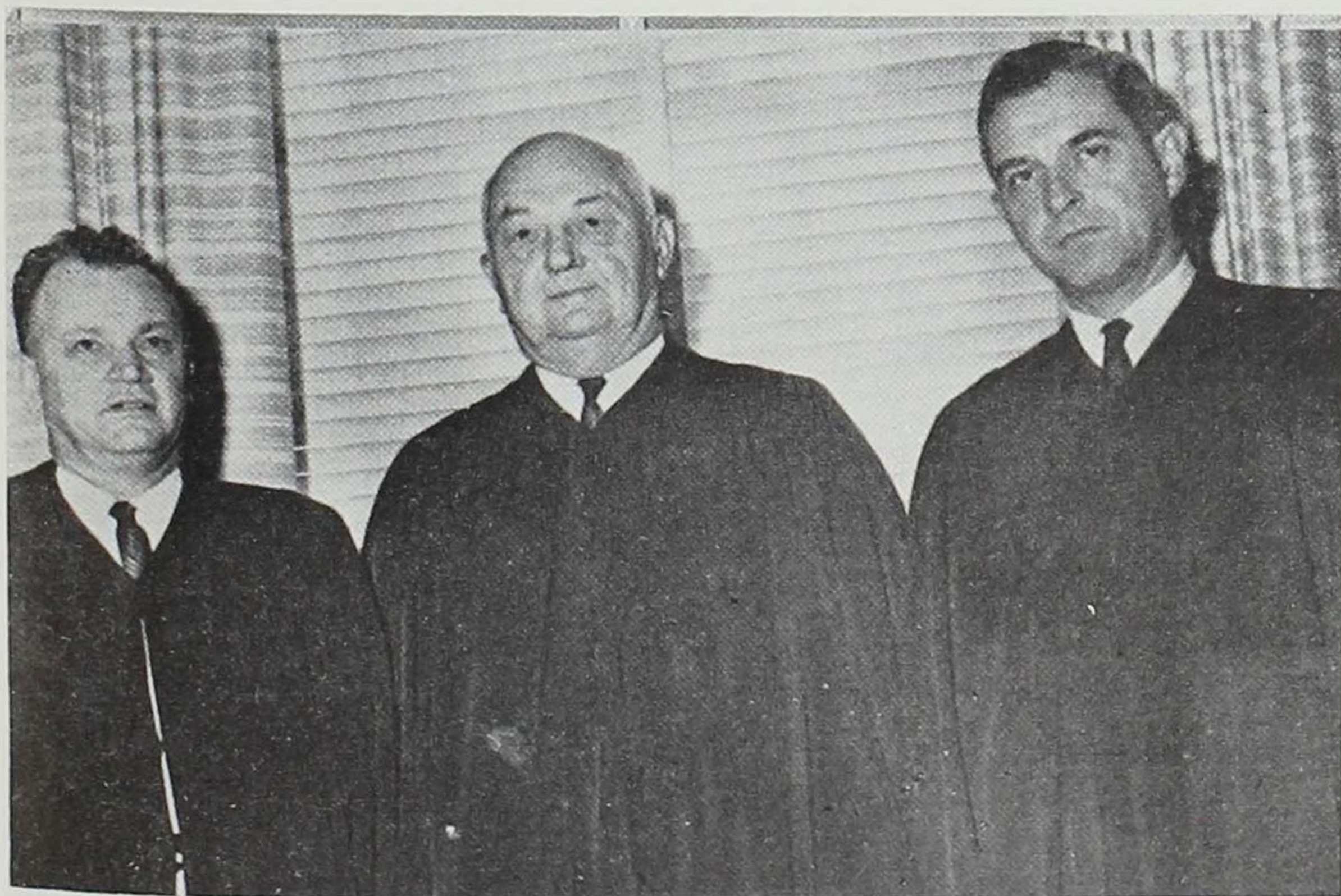
1. Apportion its seats temporarily in time for the election in 1964 of members to the 61st General Assembly meeting in 1965.
2. Adopt an apportionment formula, in the form of a proposed constitutional amendment, to submit to the people if approved by the 1965 legislature.

For guidelines, the court said seats of one chamber should be based on population and that any departure from population in apportioning seats of the other should be on "rational" lines. The word "rational" was to become highly controversial as legislators sought to define it during the special session to follow.





These Des Moines residents brought the suit challenging constitutionality of Iowa's legislative apportionment: Charles L. Davis, president, and Arthur J. Lewis, secretary-treasurer of the Iowa Federation of Labor, AFL-CIO.



*Iowa Press Association Photo*

This panel of Federal Court Jurists tried the suit: Southern Iowa District Judge Roy L. Stephenson, Des Moines; Eighth Circuit Court Judge Martin D. Van Oosterhout, Orange City; and Northern Iowa District Judge Edward J. McManus, Cedar Rapids.





## THE GOVERNOR OF THE STATE OF IOWA

WHEREAS, a panel of judges convened in the United States District Court for the Southern District of Iowa has declared that the existing Iowa constitutional and statutory provisions for the apportionment of members of the Iowa General Assembly are "invidiously discriminatory . . . null and void, and inoperative for all future elections to the General Assembly of the State of Iowa, except elections to fill vacancies in the present General Assembly," and

WHEREAS, the Federal Court panel has further declared that "the present General Assembly has the power to and is the appropriate body to provide for interim reapportionment which meets Federal constitutional standards, and action should be taken in time to make new apportionment provisions operative with respect to the 1964 election for members of the General Assembly which meets in regular session in 1965," and

WHEREAS, the Federal Court panel has ordered that "if a special session of the Legislature is not called within a reasonable time, or if the Legislature is convened and it becomes apparent that no substantial progress has been made to provide for constitutional apportionment, this court reserves jurisdiction to consider prescribing an interim plan of reapportionment, and

WHEREAS, because of conditions and the Federal Court order above referred to, an extraordinary occasion exists within the contemplation of Section Eleven (11), Article Four (IV), of the Constitution of the State of Iowa,

NOW THEREFORE, I, Harold E. Hughes, Governor of the State of Iowa, do hereby proclaim that the Sixtieth General Assembly shall convene in Extraordinary Session at the State House in the City of Des Moines, Iowa, at 10:00 a.m., on the 24th day of February, A.D., 1964, and to that end I do call upon and direct the members of the House of Representatives and of the Senate of the Sixtieth General Assembly to convene in their respective chambers in the State House at Des Moines, Iowa, at 10 o'clock a.m. on February 24, 1964, for the purpose of receiving from the Chief Executive of the State of Iowa his message pertaining to the purpose for which such assembly is convened, and to transact such legislative business in keeping therewith as may come before the Houses of the General Assembly and such other emergency matters as are necessary to provide for continued operation of government in the State of Iowa in the interim prior to the convening of the next regular session of the General Assembly.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 17th day of January in the year of Our Lord one thousand nine hundred sixty-four.

Attest:

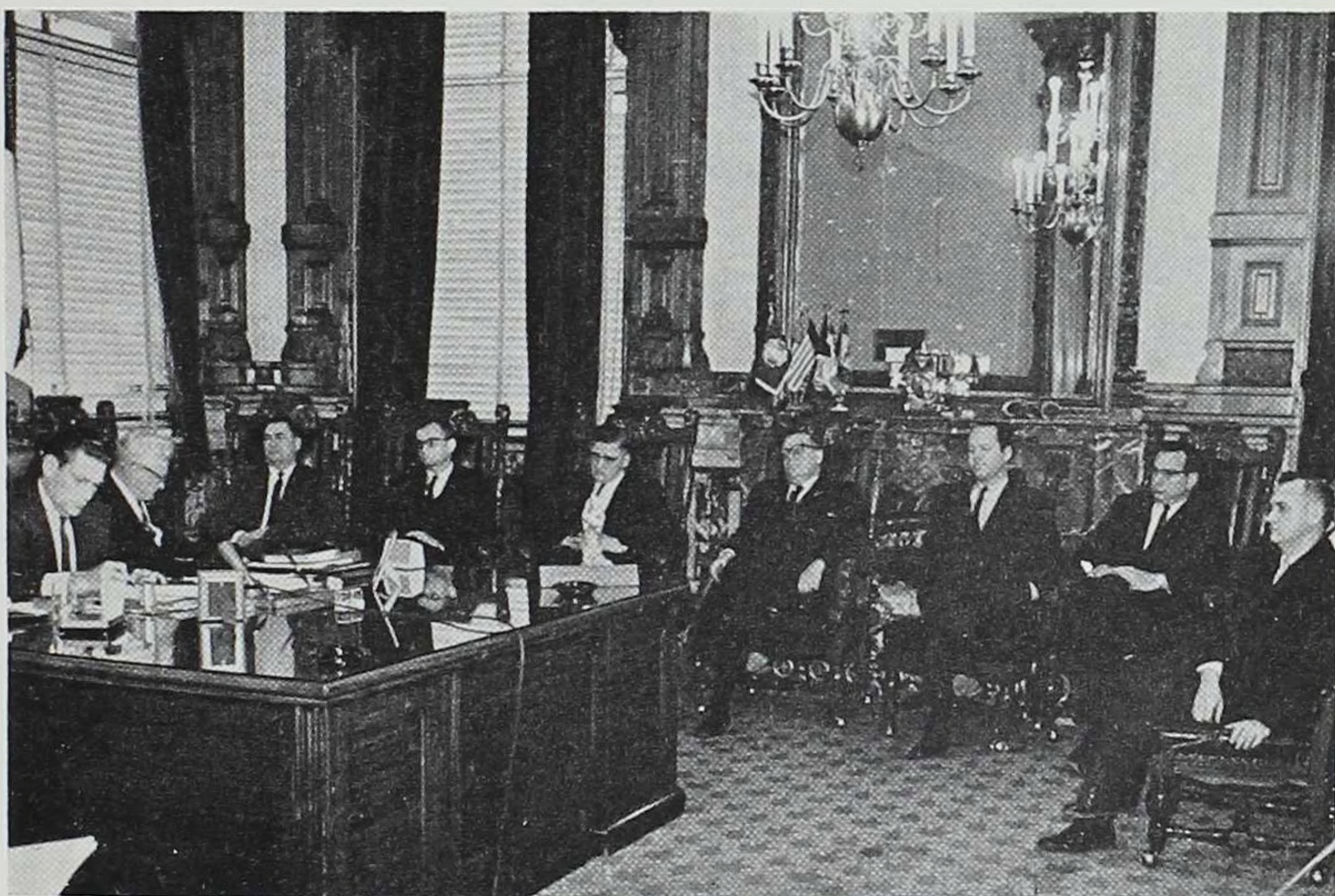
Melvin D. Synhorst (signed)

Harold E. Hughes (signed)

*Melvin D. Synhorst*  
Secretary of State

*Harold E. Hughes*  
GOVERNOR





*Des Moines Register Photo*

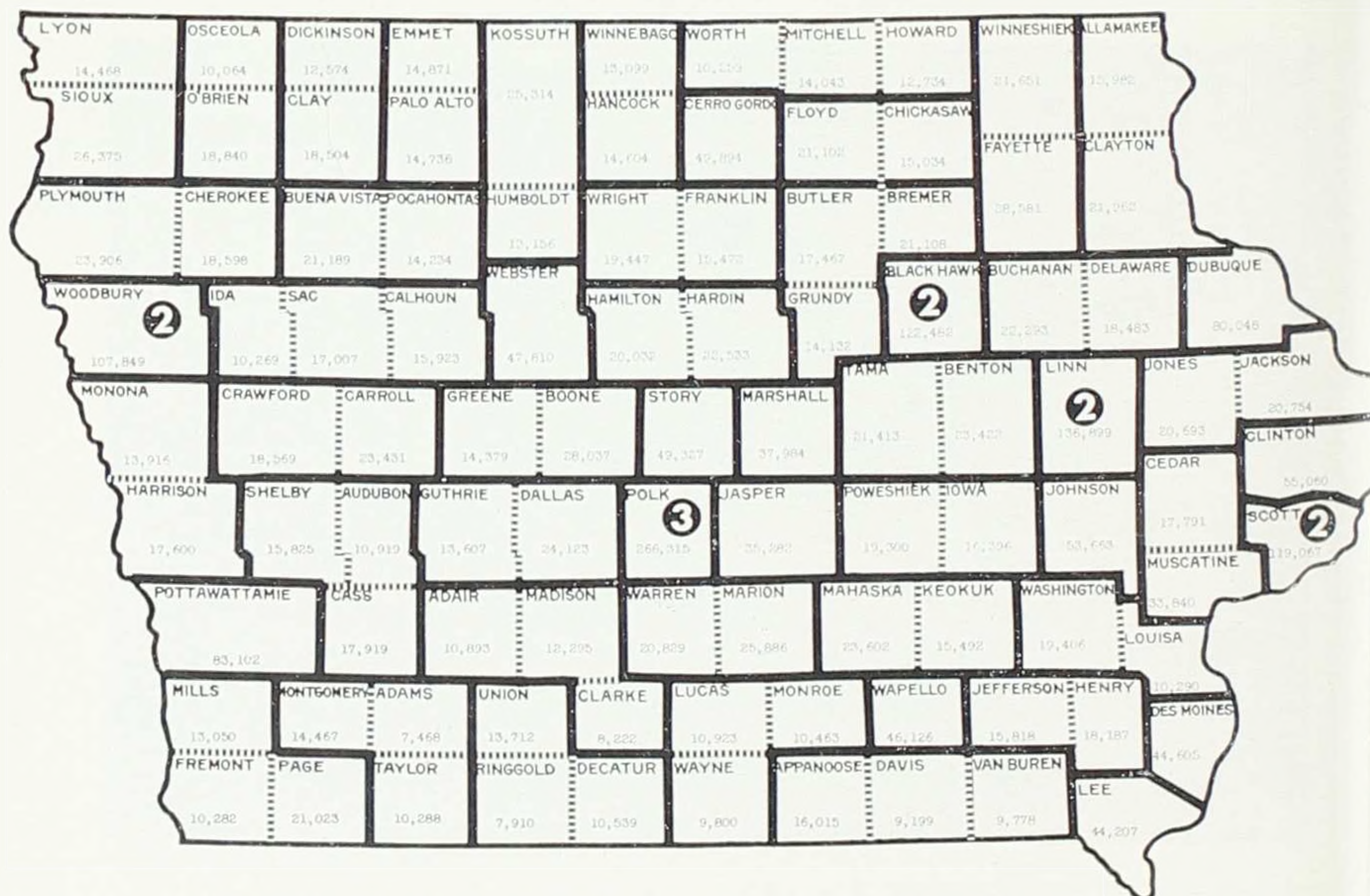
Governor Hughes confers with legislative leaders about date for Extraordinary Session. From left: Governor Hughes, Lieutenant Governor Mooty, Representative Dunton, Senator Rigler, Representatives Marvin W. Smith, Mowry, and Riley; Speaker Naden, Senator Schroeder, Representatives Camp and Hagedorn.



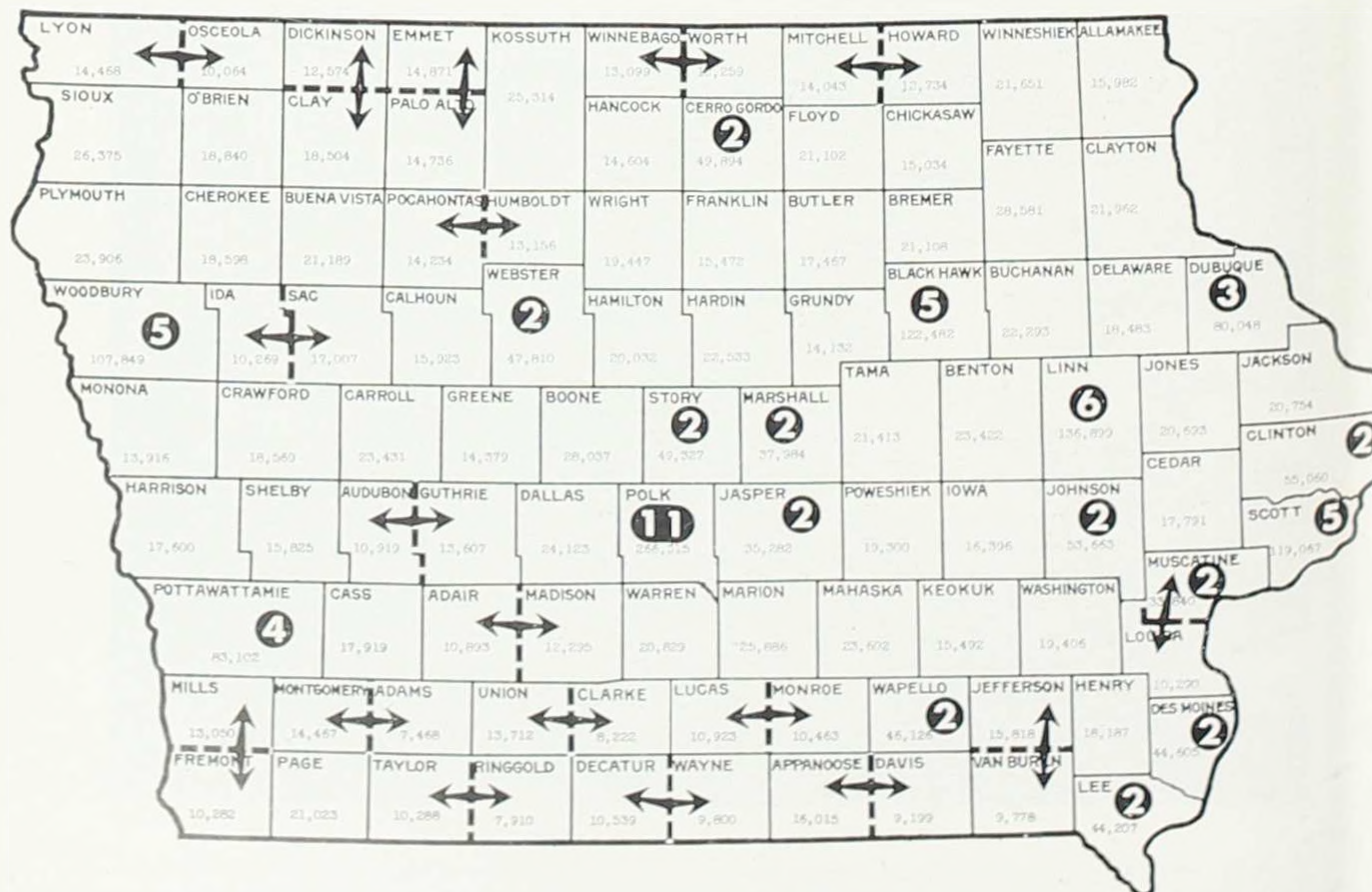
*Des Moines Register Photo*

Senate special reapportionment committee at work, clockwise from left: Flatt, Elthon, Stephens, Van Eaton, Chairman Rigler, Schroeder, Shoeman, Elvers (face not visible), Shaff, Lucken, Brown, and Frommelt (back to camera). Missing from picture: Senators Cowden, Lisle, Vance, Wiley, O'Malley.



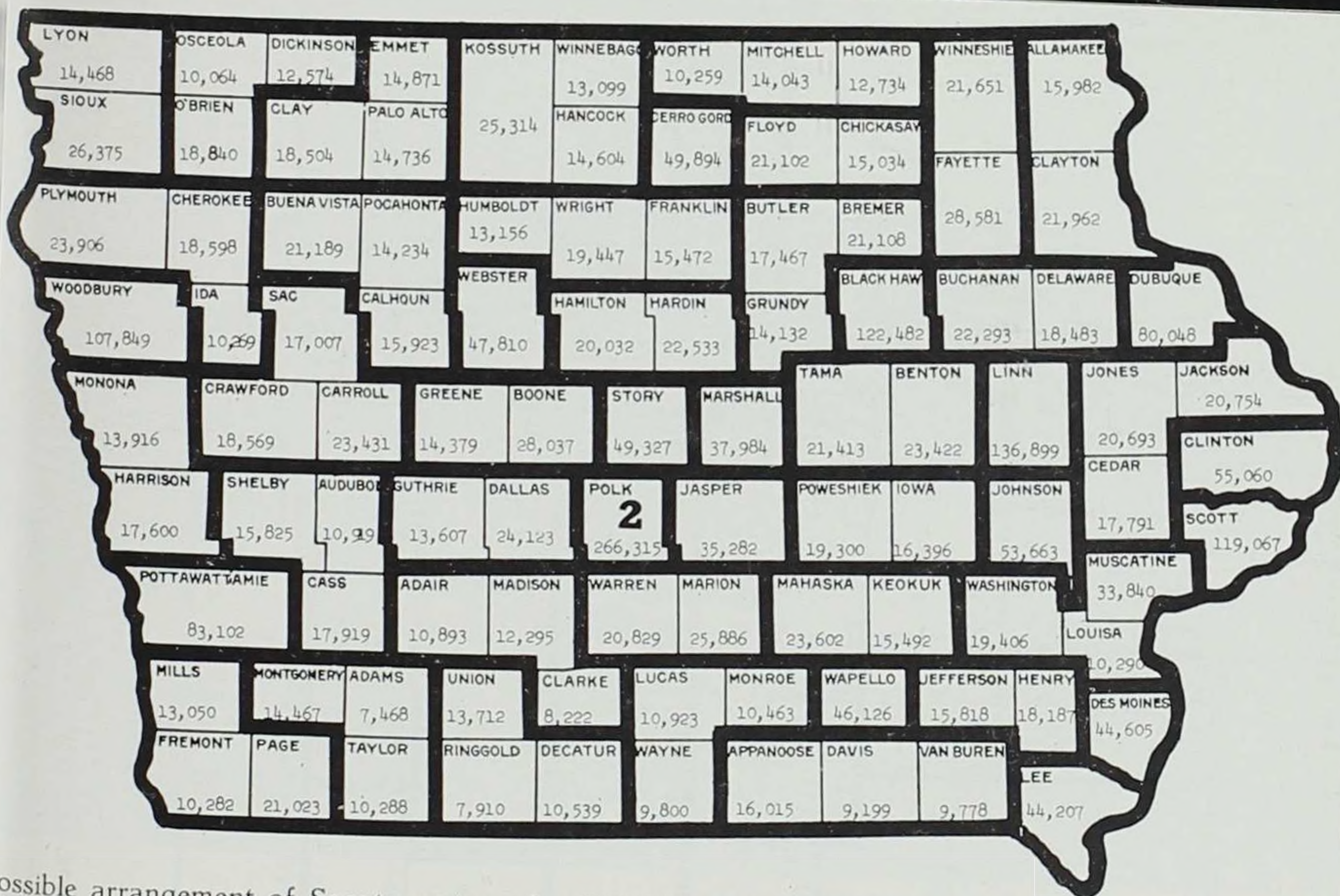


SENATE TEMPORARY PLAN. Numbers indicate seats allocated to larger counties with other big counties forming single-county districts each with one seat. Remaining counties form two-county and three-county districts as indicated by heavy lines. Total seats: 59 with majority (30) elected by 38.9% of the people.

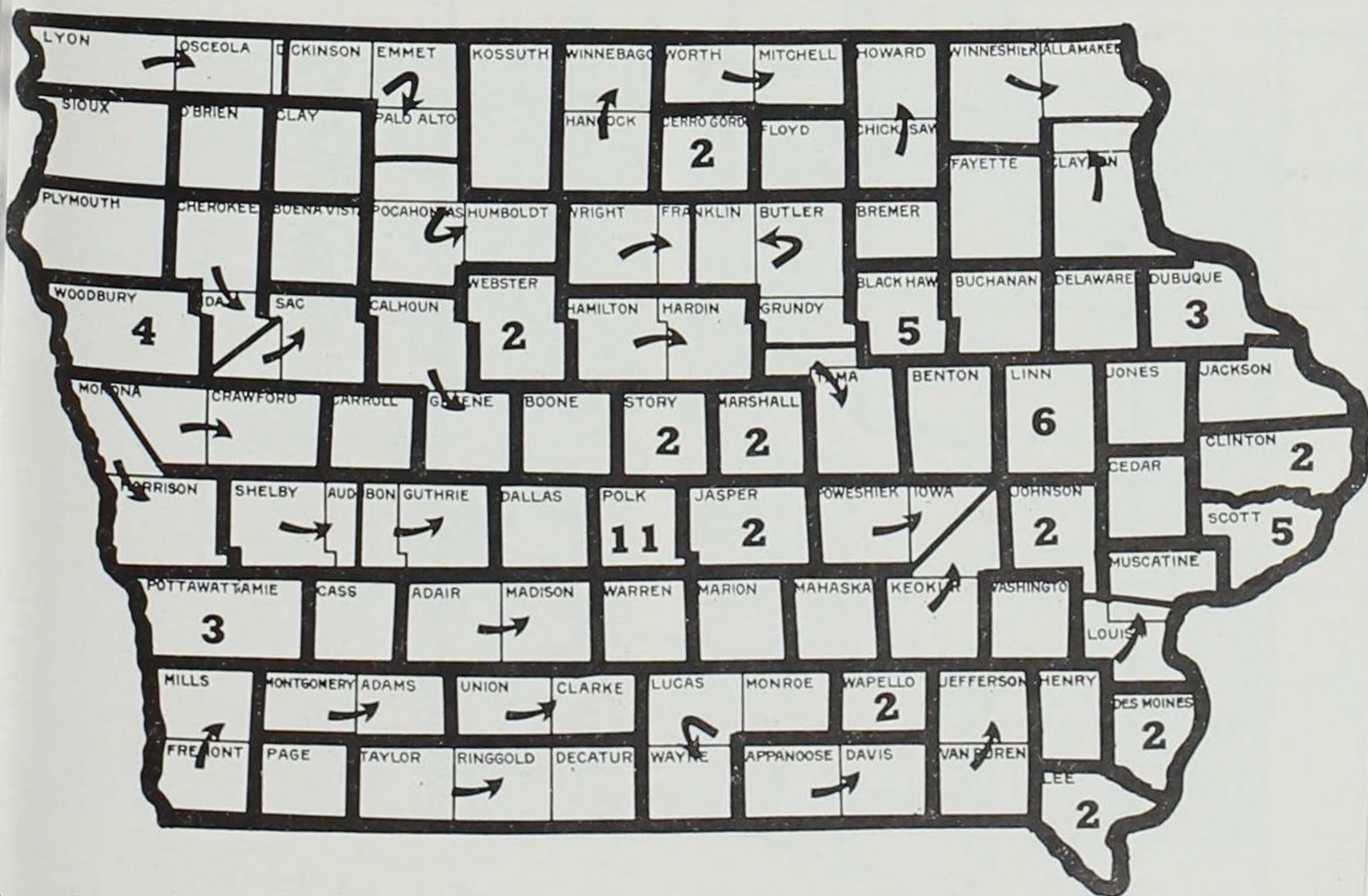


HOUSE TEMPORARY PLAN. Numbers indicate seats allocated to larger counties; arrows indicate counties combined into single districts with one seat each, except Muscatine-Louisa with two seats. Remaining counties allocated one seat apiece. Total seats: 124 with majority (63) elected by 44.02% of the people.





Possible arrangement of Senate seats under PERMANENT PLAN with Polk County district allocated two and all other districts, as indicated by black lines, allocated one apiece. Total seats: 50 with majority (26) elected by 37.4% of the people.



Possible arrangement of House seats under PERMANENT PLAN with counties entitled to more than one indicated by numbers. County lines could be crossed to create equal population districts. Total seats: 114 with majority (58) elected by 44.9% of the people.

Maps Prepared by Iowa Legislative Research Bureau







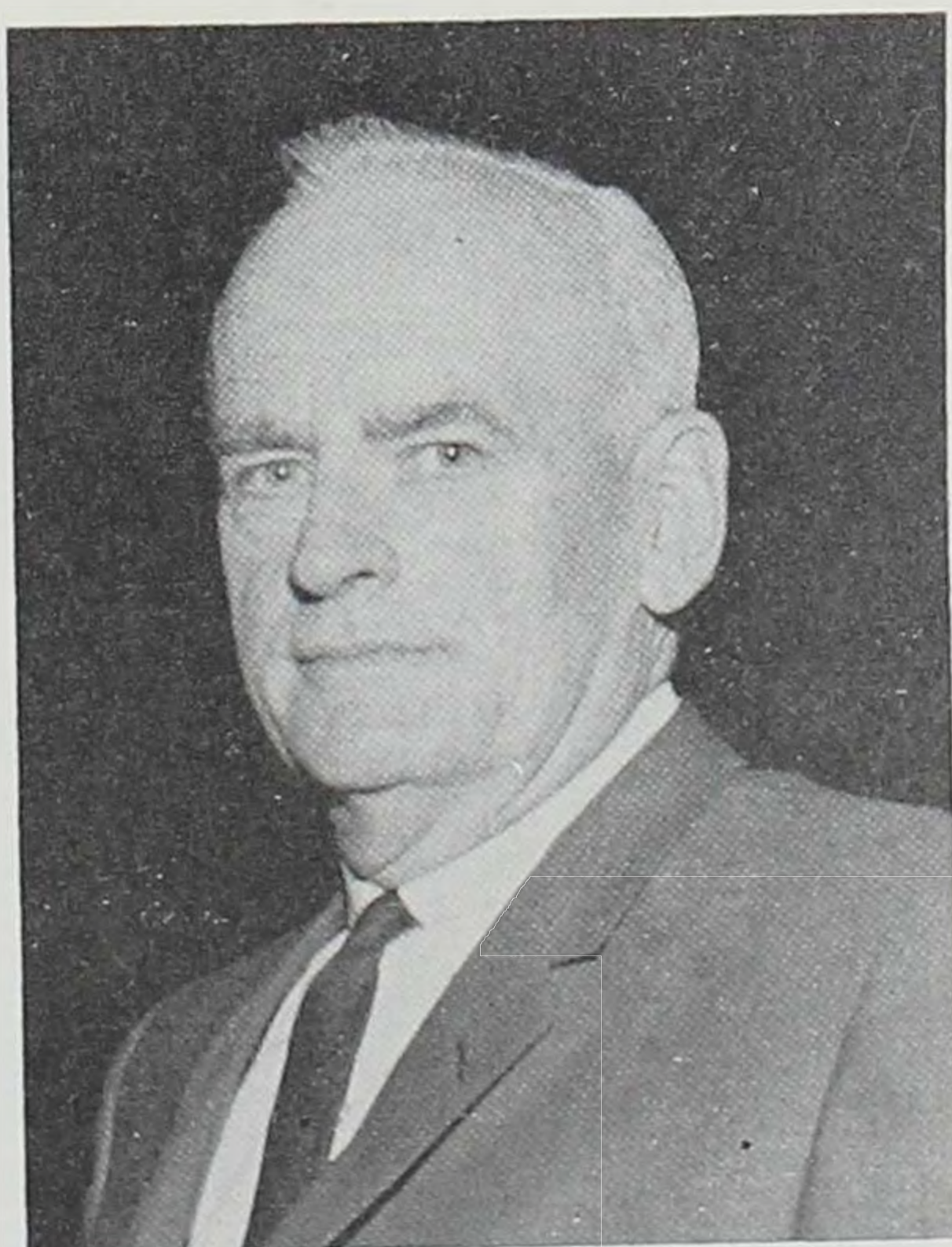


*Des Moines Register Photo*

First of three conference committees on PERMANENT PLAN, clockwise from left: Senators John A. Walker and George E. O'Malley; Representative Marvin W. Smith, Senators Jack Schroeder and Clifford M. Vance; Representatives Floyd H. Millen, David Stanley, and Raymond Eveland.

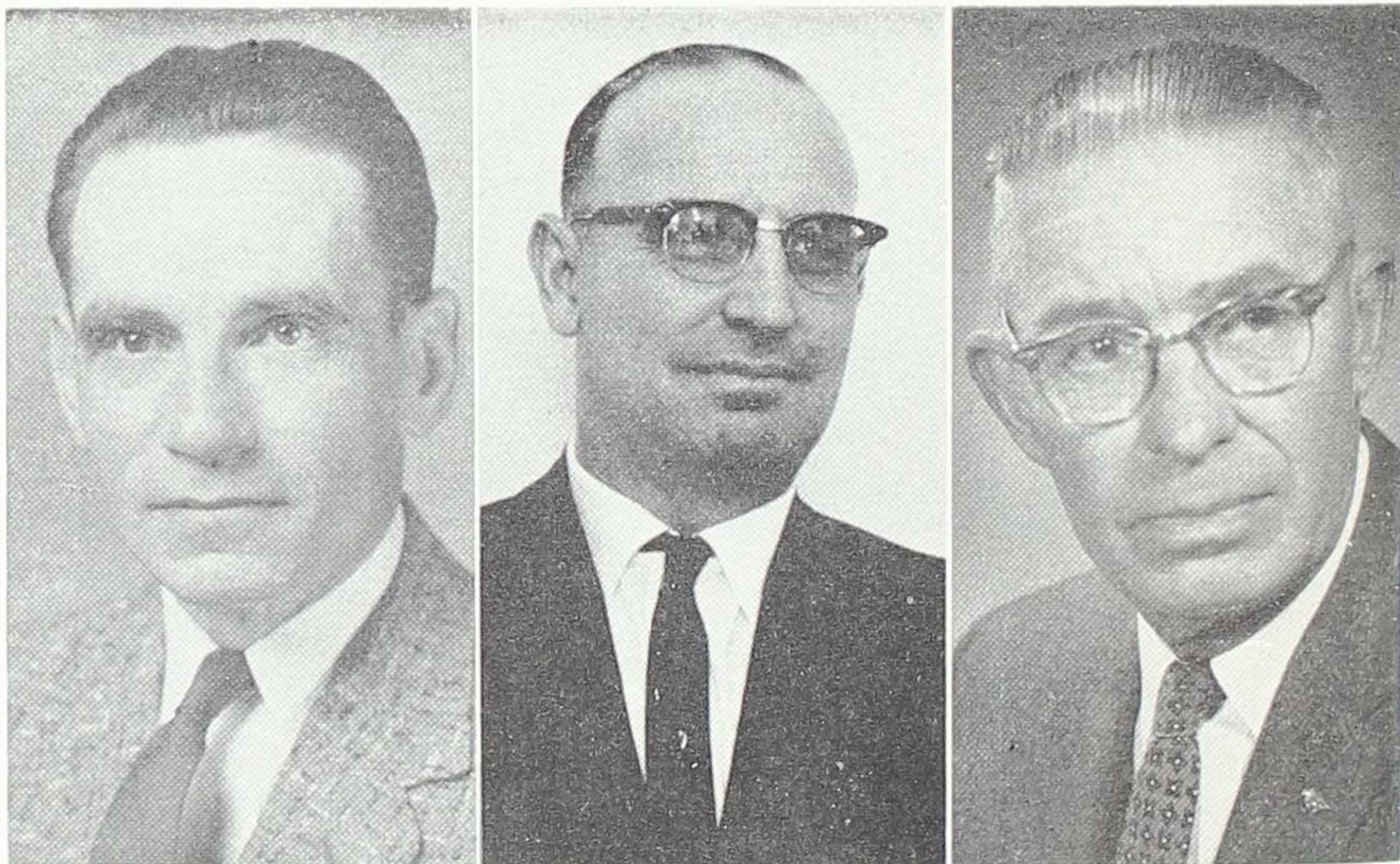


Senator David O. Shaff, author of the Shaff Plan and chairman of Second Conference Committee on PERMANENT PLAN, which was dissolved when members failed to agree.



Senator D. C. Nolan, member of Third Conference Committee and one of the authors of PERMANENT PLAN which was approved by committee and passed by the General Assembly.





They appealed Federal Court decision in reapportionment suit to United States Supreme Court where it is pending. From left: Clarke County Auditor Dean D. Hill, Osceola; Ringgold County Auditor Albert Drake, Mount Ayr; and Wayne County Auditor George T. Nickles, Corydon.



*John N. Hetherington Photos*

They filled House vacancies left by resignations: Representatives Tom Dougherty, Albia; Al Meacham, Grinnell; and Minette Doderer, Iowa City.



*Governor's Proclamation*

The legislature, of course, could not act unless called into Extraordinary Session by the Governor. Consequently, Governor Hughes took a cue from the court and moved promptly. No sooner had the court's directive become a matter of record than he called a conference with Democratic and Republican leaders of the legislature to determine the most convenient date to set for a special session. The conference was held on January 17, 1964, and even before the leaders arrived back home that evening, Governor Hughes had issued a proclamation summoning the 60th General Assembly into Extraordinary Session at 10 a.m., February 24, 1964.